

Message Text

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ACTION SCS-03

INFO OCT-01 ARA-10 ISO-00 SCA-01 DHA-02 L-03 H-01
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R 081705Z JUL 77
FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 0000
INFO RUESUA /AMCONSUL RIO DE JANEIRO 7998
AMCONSUL SAO PAULO
AMCONSUL RECIFE
AMCONSUL BELEM
AMCONSUL SALVADOR
AMCONSUL PORTO ALEGRE

LIMITED OFFICIAL USE BRASILIA 5641

E.O. 11652: N/A
TAGS: CARR
SUBJECT: LEGAL REPRESENTATION AVAILABLE TO AMERICANS ARRESTED
ABOARD

REF: STATE 147704

FOLLOWING ARE THE ANSWERS OBTAINED BY THIS POST TO QUESTIONS UNDER
PARAGRAPH 2 OF THE REFTEL:

A) MOST STATES IN BRAZIL HAVE PUBLIC DEFENDERS, PAID BY THE STATE,
BUT THEY ARE GENERALLY FOUND IN STATE CAPITALS AND LARGER CITIES.
AS FAR AS THE AVAILABILITY OF THEIR SERVICES IS CONCERNED, WE HAVE TO
MAKE THE FOLLOWING DISTINCTIONS: IN THE CRIMINAL AREA, THE BRAZILIAN
PENAL CODE PROVIDES THAT NO ONE CAN BE PROSECUTED WITHOUT A DEFENDER.
IF AN ACCUSED DOES NOT WANT OR CANNOT AFFORD PRIVATE COUNSEL, THE
JUDGE WILL DESIGNATE A PUBLIC DEFENDER TO DEFEND HIM OR, IN PLACES
WHERE PUBLIC DEFENDERS ARE NOT AVAILABLE, A PRIVATE ATTORNEY. IF THE
DEFENDANT IS CONVICTED, HE WILL BE REQUIRED TO PAY THE ATTORNEY'S
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FEES, IF HE CAN AFFORD THEM, WITH THE FEE TO BE ESTABLISHED BY THE
JUDGE. IN THE CRIMINAL AREA, BOTH BRAZILIANS AND FOREIGNERS HAVE
THE SAME RIGHTS SO FAR AS THE AVAILABILITY OF FREE COUNSEL IS
CONCERNED.

B) YES, IN CRIMINAL CASES, AS EXPLAINED ABOVE.

C) EMBASSY LEGAL EXPERT MAINTAINS THAT PROFESSIONAL LEVEL OF PUBLIC DEFENDERS IN BRAZIL IS GENERALLY CONSIDERED TO BE GOOD AND THAT THE QUALITY OF PUBLICLY-FUNDED LEGAL ASSISTANCE IN BRAZIL IS GENERALLY TO BE ADEQUATE. POST'S MOST RECENT EXPERIENCE WITH A JAILED AMERICAN WOULD INDICATE THAT LEGAL REPRESENTATION, ALTHOUGH AVAILABLE, IS TOTALLY INADEQUATE AND OF INFERIOR QUALITY. POST CONTINUALLY RECEIVES COMPLAINTS FROM AMERICANS WHO HAVE ENGAGED BRAZILIAN LAWYERS FOR CIVIL SUITS AND HAVE FOUND THEM TO BE EXPENSIVE, INEFFICIENT, AND AT TIMES, CORRUPT.

D) AMERICAN CONSULATE PORTO ALEGRE CONCURS IN PARTS A AND B AND WISHES TO ADD TO PART C THAT THE A LOCAL CONTACT INFORMED HIM THAT THE QUALITY OF PUBLIC DEFENDERS LEFT MUCH TO BE DESIRED. SUCH LAWYERS ARE NOT WILLING TO PUT MUCH EFFORT INTO SUCH CASES.
JOHNSON

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